

Served: August 4, 1999



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 2nd day of August, 1999

Application of

**NAC NETWORK, INC.
d/b/a NACNET**

for a waiver of the 45-day advance filing requirements of
14 CFR 204.7 in order to resume operations under its
certificate authority

Docket OST-99-6005

ORDER GRANTING WAIVER AND REISSUING CERTIFICATE

Summary

By this order, we find, subject to conditions, that NAC Network, Inc. d/b/a NACNET continues to be fit, willing, and able to engage in the all-cargo air transportation for which it holds certificate authority, and grant the carrier a waiver of the 45-day advance notice provision of section 204.7 of our rules to the extent necessary to permit it to resume operations immediately. We are also amending and reissuing its certificate to include a new condition on its operations.

Background

By Order 97-8-2, dated August 4, 1997, we found NACNET fit, willing, and able to conduct certificated air carrier operations, and we transferred and reissued to it the interstate scheduled certificate previously held by MarkAir Express, Inc., under section 41102 of Title 49 of the United States Code ("the Statute"). That authority was made effective with respect to charter air transportation of passengers and scheduled air transportation of property and mail with small aircraft (*i.e.*, 60 seats or less or 18,000 pounds payload or less) on July 31, 1998 (*see* Order 98-8-4). NACNET, located in Anchorage, Alaska, is a wholly owned subsidiary of Northern Air Cargo, Inc., a certificated air carrier operating large aircraft in all-cargo service from its Anchorage base. NACNET provided certificated air transportation of cargo and mail with a Cessna C-185 aircraft briefly before ceasing these operations. On July 8, 1999, we notified the

carrier that, in accordance with section 204.7 of our rules (14 CFR section 204.7), as a result of the cessation of all operations for which it was found fit, its certificate authority was suspended, and that it could not resume such operations until its fitness was redetermined. Section 204.7 requires that a notice of intent to resume operations, along with updated fitness information, must be filed at least 45 days before the intended start-up to allow the Department sufficient time to make a fitness finding.

Notice of Intent to Resume Operations

On July 20, 1999, NACNET filed a notice of intent to resume its certificated operations, updated information on its fitness, and a request for a waiver of the 45-day advance filing requirement to the extent necessary to allow it to reinstitute operations immediately. NACNET stated that, although it initially operated scheduled cargo service with the C-185 aircraft, it had always intended to acquire a larger, twin-engine turboprop aircraft. The carrier stated that it terminated its operations with the C-185 while making preparations to acquire an aircraft more suitable to its operations, and to have it added to its Operations Specifications by the FAA. The new aircraft is a Shorts SC-7 Skyvan, configured for all-cargo operations, and with a maximum cargo payload of 4,000 pounds. The aircraft was purchased by Mr. Adam Sholton, General Manager of NACNET, and is being leased by him to the carrier for use in conducting scheduled and charter cargo operations. The applicant states that it has an opportunity to operate charter flights before the end of July, and has requested that the Department grant the requested waiver so that NACNET may resume operations in time to take advantage of the opportunity.

After reviewing the information filed by NACNET and other data available to us, as discussed below, we are persuaded that the carrier continues to be fit while it remains under the operational control of its parent, Northern Air Cargo. Therefore, we are granting NACNET's request to resume operations.

Fitness

NACNET states that there have been no changes in its fitness since it received its certificate authority in August 1998. The carrier continues to be wholly owned by Northern Air Cargo, and its key personnel continue to be Ms. Mary Sholton Witte (President), Mr. Adam Sholton (General Manager and Chief Pilot), Mr. Leonard F. Kirk (Director of Operations), and Mr. Stanley B. Anderson (Director of Maintenance). Northern Air Cargo itself, based on noticeable evidence, continues to be fit. Northern Air Cargo has undergone no fitness-related changes in the past year except reassigning Mr. Robert C. Dynan from General Manager to President in lieu of Ms. Mary Sholton Witte, who is now Vice Chairman. Mrs. Rita Sholton continues to be Chairman and Chief Executive Officer of Northern Air Cargo.

NACNET states that it initially plans to utilize the new Skyvan for three to five round-trip scheduled cargo flights per week between Anchorage and Iliamna, Alaska, in addition to charter flights on its own behalf and for Northern Air Cargo. NACNET states that it plans to operate approximately 50 hours per month at a monthly operating cost of approximately \$37,500, or \$450,000 per year. When NACNET was originally certificated, its parent, Northern Air Cargo

provided an affidavit, signed by its Chairman, Mrs. Sholton, that it would financially support NACNET's operations for at least one year following the institution of those operations. The affidavit stated that Northern Air Cargo's financial support would include any future NACNET operations with twin-engine turboprop aircraft. In a supplement to NACNET's current application, Mr. R. J. Hallford, Vice President of Northern Air Cargo, stated that the carrier's pledge to provide its financial resources in support of NACNET remained in effect.

We examined the Form 41 reports filed with the Department by Northern Air Cargo. Its balance sheet dated March 31, 1999, revealed a working capital balance of \$4.1 million, long-term debt of \$8.9 million, and retained earnings and stockholders' equity of approximately \$1.4 million. Therefore, we conclude that Northern Air Cargo has funds at hand to enable it to honor its pledge of support to NACNET.

We also examined the FAA's enforcement and accident and incident records for both NACNET and Northern Air Cargo for the year since NACNET received its certificate authority. These records indicate that neither carrier has been the subject of any enforcement actions or has been involved in any accidents or incidents during this period. Furthermore, the FAA advised us that NACNET's operations have been satisfactory with respect to compliance and safety, that its new Skyvan has been added to its Operations Specifications, and that the FAA knows of no reason why we should not find NACNET fit to reinstitute its certificated operations.

Upon investigating Northern Air Cargo's and NACNET's compliance with our reporting requirements, we found that consolidated reports were filed in a timely manner by Northern Air Cargo for both itself and its subsidiary, NACNET. In addition, we found no record of any consumer or shipper complaints about either company over the past year.

Waiver

Based on the above, we find that NACNET has demonstrated that it continues to be fit, willing, and able to engage in the section 41102 cargo operations for which it holds a certificate, and that it is in the public interest to grant its request for a waiver of the 45-day advance notice requirements of section 204.7 to enable it to resume its operations immediately.

It is clear, however, that NACNET's existence and its ability to conduct its air transportation operations are dependent entirely on the support of its parent company, Northern Air Cargo. NACNET is wholly owned by Northern Air Cargo, all of its managers are also employed in similar positions with Northern Air Cargo, and all of its financial support is from Northern Air Cargo. Thus, our finding that NACNET continues to be fit and should be allowed to resume operations is based completely on its relationship with Northern Air Cargo. Were that relationship to change, such as through the sale of NACNET to a third party, our findings would no longer apply. Thus, in authorizing NACNET to resume operations, we have decided to reissue its certificate with the following condition: "The air transportation authorized herein is limited to flight operations conducted under the direction, control, and responsibility of Northern Air Cargo." In the event NACNET were sold, its certificate authority would cease to be effective.

As a final matter, when we issued NACNET effective authority by Order 98-8-4, August 4, 1998, we directed that the company submit a first-year progress report to the Air Carrier Fitness Division within 45 days following the end of its first year of actual flight operations. In light of the fact that NACNET has only conducted limited flight operations thus far, we will direct that the progress report be submitted one year from the date of this order.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12(b)(1):

1. We find that NAC Network, Inc. d/b/a NACNET is fit, willing, and able to resume conducting cargo air transportation under its certificate of public convenience and necessity, as amended and reissued by this order, and grant NAC Network, Inc. d/b/a NACNET a waiver of the 45-day advance notice requirement of section 204.7 of the Department's regulations to permit it to resume its certificated operations immediately.
2. We direct NAC Network, Inc. d/b/a NACNET to submit to the Air Carrier Fitness Division a progress report, as described in Order 98-8-4, one year from the date of this order.
3. We will serve a copy of this order on all persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The actions confirmed in this order were effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

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http://dms.dot.gov/reports/reports_aviation.asp*



**Certificate of Public Convenience and Necessity
for
Interstate Air Transportation**

This Certifies That

**NAC NETWORK, INC.
d/b/a NACNET**

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 99-8-1
On August 2, 1999
Effective on (see attached)
Analysis**

**John V. Coleman
Director, Office of Aviation**



Terms, Conditions, and Limitations

NAC NETWORK, INC.
d/b/a NACNET

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The authority granted here is effective on July 31, 1998, with respect to charter air transportation of passengers and scheduled air transportation of property and mail, with small aircraft (*i.e.*, aircraft having a maximum passenger capacity of sixty (60) seats or less, or a maximum cargo payload capacity of 18,000 pounds or less). The remaining authority--to conduct scheduled passenger operations and to conduct any air transportation operations with large aircraft—is conditioned upon the holder's being redetermined fit, willing, and able to conduct such operations and upon receipt from the Federal Aviation Administration of amended Operations Specifications authorizing such service.
- (3) The air transportation authorized herein is limited to flight operations conducted under the direction, control, and responsibility of Northern Air Cargo.
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.

*This certificate is being reissued to reflect the addition of a restriction that the operations conducted under this authority are limited to those conducted under the direction, control, and responsibility of Northern Air Cargo.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(8) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

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